

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

681S0581

SENATE BILL NO. 154

Introduced by: Senators Begalka and Maher and Representatives Brunner, Magstadt, Rozum,
and Turbiville

1 FOR AN ACT ENTITLED, An Act to provide funding for education by temporarily increasing
2 the state sales and use tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The additional revenue received by the state pursuant to the provisions of this Act
5 through the increased rate of taxation imposed in chapters 10-45 and 10-46 shall be used to
6 maintain the per student allocation for school fiscal year 2012 at an amount that is equivalent
7 to the per student allocation provided in subdivision 13-13-10.1(4) for school fiscal year 2011.

8 Section 2. That § 10-45-2 be amended to read as follows:

9 10-45-2. There is hereby imposed a tax upon the privilege of engaging in business as a
10 retailer, a tax of four and one-half percent upon the gross receipts of all sales of tangible
11 personal property consisting of goods, wares, or merchandise, except as otherwise provided in
12 this chapter, sold at retail in the State of South Dakota to consumers or users.

13 Section 3. That § 10-45-5 be amended to read as follows:

14 10-45-5. There is imposed a tax at the rate of four and one-half percent upon the gross
15 receipts of any person from engaging or continuing in any of the following businesses or



1 services in this state: abstracters; accountants; ancillary services; architects; barbers; beauty
2 shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing;
3 exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial
4 services and supplies; specialty cleaners; laundry; linen and towel supply; membership or
5 entrance fees for the use of a facility or for the right to purchase tangible personal property, any
6 product transferred electronically, or services; photography; photo developing and enlarging;
7 tire recapping; welding and all repair services, except farm machinery, farm attachment units,
8 or irrigation equipment repair services; cable television; and rentals of tangible personal
9 property except leases of tangible personal property between one telephone company and
10 another telephone company, motor vehicles as defined by § 32-5-1 leased under a single contract
11 for more than twenty-eight days and mobile homes. However, the specific enumeration of
12 businesses and professions made in this section does not, in any way, limit the scope and effect
13 of § 10-45-4.

14 Section 4. That § 10-45-5.3 be amended to read as follows:

15 10-45-5.3. There is imposed, at the rate of four and one-half percent, an excise tax on the
16 gross receipts of any person engaging in oil and gas field services (group no. 138) as enumerated
17 in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy
18 Division of the Office of Management and Budget, Office of the President.

19 Section 5. That § 10-45-6 be amended to read as follows:

20 10-45-6. There is hereby imposed a tax of four and one-half percent upon the gross receipts
21 from sales, furnishing, or service of gas, electricity, and water, including the gross receipts from
22 such sales by any municipal corporation furnishing gas, and electricity, to the public in its
23 proprietary capacity, except as otherwise provided in this chapter, when sold at retail in the State
24 of South Dakota to consumers or users.

Section 6. That § 10-45-6.1 be amended to read as follows:

10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax of four and one-half percent upon the gross receipts from providing any intrastate, interstate, or international telecommunications service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state.

However, the tax imposed by this section does not apply to:

- (1) Any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- (2) Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- (3) Any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue to meet the criterion established in § 10-45-6.3 and the call center has provided to the telecommunications service provider an exemption certificate issued by the secretary indicating that it meets the criterion.

If a call center uses an exemption certificate to purchase services not meeting the criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty, and interest.

Section 7. That § 10-45-6.2 be amended to read as follows:

10-45-6.2. There is hereby imposed a tax of four and one-half percent upon the gross receipts of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same state and are billed to a customer with a place of primary use in this state or are deemed to have originated or been received in this state and to be billed or charged to a service address in this state if the customer's place of primary use is located in this state regardless of where the service actually originates or terminates.

1 Notwithstanding any other provision of this chapter and for purposes of the tax imposed by this
2 section, the tax imposed upon mobile telecommunication services shall be administered in
3 accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

4 Section 8. That § 10-45-8 be amended to read as follows:

5 10-45-8. There is imposed a tax of four and one-half percent upon the gross receipts from
6 all sales of tickets or admissions to places of amusement and athletic contests or events, except
7 as otherwise provided in this chapter.

8 Section 9. That § 10-45-71 be amended to read as follows:

9 10-45-71. There is imposed a tax of four and one-half percent on the gross receipts from the
10 transportation of passengers. The tax imposed by this section shall apply to any transportation
11 of passengers if the passenger boards and exits the mode of transportation within this state.

12 Section 10. That § 10-46-2.1 be amended to read as follows:

13 10-46-2.1. For the privilege of using services in South Dakota, except those types of services
14 exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal
15 to four and one-half percent of the value of the services at the time they are rendered. However,
16 this tax may not be imposed on any service rendered by a related corporation as defined in
17 subdivision 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4)
18 or on any service rendered by a financial institution as defined in subdivision 10-43-1(4) for use
19 by a related corporation as defined in subdivision 10-43-1(11). For the purposes of this section,
20 the term related corporation includes a corporation which together with the financial institution
21 is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on
22 January 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.
23 § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the
24 purpose of this chapter, services rendered by an employee for the use of his employer are not

1 taxable.

2 Section 11. That § 10-46-2.2 be amended to read as follows:

3 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal
4 property and any product transferred electronically in this state at the rate of four and one-half
5 percent of the rental payments upon the property.

6 Section 12. That § 10-46-58 be amended to read as follows:

7 10-46-58. There is imposed a tax of four and one-half percent on the privilege of the use of
8 any transportation of passengers. The tax imposed by this section shall apply to any
9 transportation of passengers if the passenger boards and exits the mode of transportation within
10 this state.

11 Section 13. That § 10-46-69 be amended to read as follows:

12 10-46-69. There is hereby imposed a tax of four and one-half percent upon the privilege of
13 the use of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1,
14 2002, that originate and terminate in the same state and are billed to a customer with a place of
15 primary use in this state. Notwithstanding any other provision of this chapter and for purposes
16 of the tax imposed by this section, the tax imposed upon mobile telecommunication services
17 shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

18 Section 14. That § 10-46-69.1 be amended to read as follows:

19 10-46-69.1. Except as provided in § 10-46-69, there is hereby imposed a tax of four and one-
20 half percent upon the privilege of the use of any intrastate, interstate, or international
21 telecommunications service that originates or terminates in this state and that is billed or
22 charged to a service address in this state, or that both originates and terminates in this state.

23 However, the tax imposed by this section does not apply to:

24 (1) Any eight hundred or eight hundred type service unless the service both originates

1 and terminates in this state;

2 (2) Any sale of a telecommunication service to a provider of telecommunication
3 services, including access service, for use in providing any telecommunication
4 service; or

5 (3) Any sale of interstate telecommunication service provided to a call center that has
6 been certified by the secretary of revenue to meet the criterion established in § 10-45-
7 6.3 and the call center has provided to the telecommunications service provider an
8 exemption certificate issued by the secretary indicating that it meets the criterion.

9 If a call center uses an exemption certificate to purchase services not meeting the criterion
10 established in § 10-45-6.3, the call center is liable for the applicable tax, penalty, and interest.

11 Section 15. That § 10-46-69.2 be amended to read as follows:

12 10-46-69.2. There is hereby imposed a tax of four and one-half percent upon the privilege
13 of the use of any ancillary services.

14 Section 16. The provisions of this Act are repealed on July 1, 2012.